IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 267 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIRENDRASINH JAVANSINH MAKWANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 267 of 2002

MR BIPIN P JASANI for Petitioner No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 17/01/2002

ORAL JUDGEMENT

The petitioner has approached this Court with a prayer that the respondents be directed to give appointment to the petitioner to a Class III or Class IV post on compassionate ground, as the father of the

petitioner, Shri Javansinh L. Parmar, serving under respondent no. 4, expired on 11th April, 1980, when he was in service.

Facts giving rise to the present petition in a nut shell are as under :-

Father of the petitioner was working as an Assistant Teacher in a school managed by respondent no. 4. On 11th April, 1980 when he was in service, he expired. The petitioner, the son of late Shri Javansingh L. Parmar, made a request for appointment on compassionate ground to a Class III or Class IV post, because his father had expired when he was in service but his request has been rejected and therefore the petitioner has approached this Court with a prayer that respondents be directed to appoint the petitioner to a post of Clerk or Peon on compassionate ground.

Though the first application which was submitted by the petitioner to the concerned authority for claiming appointment on compassionate ground is not on record, it appears that somewhere in 1999 the petitioner made first effort to get an appointment on compassionate ground. As the application submitted by the petitioner to respondent no. 4 was not entertained, the petitioner had approached respondent no. 2 - the Commissioner of Schools with a grievance that his application for being appointed to a Class III or Class IV post on compassionate ground was not being looked into properly by respondent no. 4. Respondent no. 2 thereupon asked respondent no. 3, the District Education Officer, as to why the application given by the petitioner was not being entertained. It appears that respondent no. 3 thereafter made inquiries and ultimately it was found that the application submitted by the petitioner could not be entertained for the reason that the father of the petitioner, Late Shri Javansing L. Parmar, had expired on 11th April, 1980 whereas the policy with regard to giving appointment on compassionate ground came into force under Government Resolution dated 4th July, 1988 and, therefore, the application submitted by the petitioner was not entertained. It is also relevant to note that there was no vacancy in the cadre of peon at the relevant time in the school managed by respondent no. 4 where the father of the petitioner was working. This was an additional reason for not entertaining the petitioner's application.

The petitioner has been aggrieved by the communication dated 8th November, 2001 addressed to respondent no. 4 by respondent no. 3, whereby

respondent no. 4 was informed that the application submitted by the petitioner could not be entertained for the aforestated reason.

Learned Advocate Shri B.P Jasani appearing for the petitioner has submitted that looking to the policy laid down in Government Resolution dated 4th July, 1988, the petitioner is entitled to appointment on compassionate ground to a Class III or Class IV post. It has been submitted by him that it was not proper on the part of respondent no. 3 to deny the petitioner of his right to be appointed on compassionate ground to a Class III or Class IV post, as the father of the petitioner had expired when he was in service. It has been submitted by him that the reason stated in the communication dated 8th November, 2001 for denying appointment to the petitioner on compassionate ground is not just and proper. Even though the father of the petitioner had expired before 4th July, 1988, as the petitioner had become major after 4th July, 1988, the petitioner should have been given an appointment.

The petitioner has relied upon judgement delivered in the case of SATYENDRAKUMAR PARBATSINH ZALA & ORS. Vs. THE SECRETARY, GOVT. OF GUJARAT, EDUCATION DEPARTMENT & ORS. reported in 1993 (1) GLR 364. It has been submitted by him that as per law laid down by this Court, even if the father of the petitioner had expired before the date on which the government resolution had come into force, the petitioner should have been offered appointment on compassionate ground. He has also submitted that looking to the law laid down by the said judgement, the delay caused in approaching the authority by the petitioner is not relevant.

Thereafter, the learned Advocate has relied upon a judgement delivered in the case of JAGDISHBHAI AMRUTBHAI PATEL Vs. DIVISIONAL CONTROLLER reported in 1998 (1) GCD 306. It has been submitted by him that on the basis of the said judgement, the petitioner should not have been denied the appointment simply because there was delay in submitting the application. He has submitted that the observations made in the above judgement are to the effect that the compassionate appointment is to be given for helping the family who is in difficulty and, therefore, the petitioner's case ought to have been considered objectively and with due sympathy.

The learned Advocate has thereafter relied upon a judgement dated 17th July, 2001 delivered by this Court

in the case of BHAVESH D. PANDHI Vs. STATE OF GUJARAT (SCA No 2716/1992). He has submitted that on the basis of the judgement delivered in the said case, as the petitioner was minor at the relevant time, the petitioner ought to have been given an appointment to a Class III or Class IV post on compassionate ground upon attaining majority.

Learned Advocate has also relied upon a judgement delivered by the Hon'ble Supreme Court in the case of STATE OF U.P. Vs. PARAS NATH reported in 1998 (2) S.C.C. 412. According to him, there is no delay in the case of the petitioner because as per the Government Resolution referred to hereinabove, it was open to the petitioner to approach the concerned authority upon attaining majority. It has been submitted by him that the petitioner was born on 12th July, 1972. He attained majority in the year 1990 and he passed S.S.C. examination in the year 1992. He became qualified for being appointed to a Class III or Class IV post for the first time in the year 1992. Thus, it has been submitted by him that on account of minority of the petitioner and due to the fact that he attained the qualification in 1992, the petitioner could not have approached the concerned authorities before 1992.

I have heard the learned Advocate at length and have also gone through the judgements referred to hereinabove.

In my opinion, looking to the facts of the case, the petitioner has no legal or fundamental right to get any appointment on compassionate ground.

With regard to the concept of compassionate appointment, the Hon'ble Supreme Court has observed in paragraph 8 of the judgement delivered in the case of HARYANA STATE ELECTRICITY BOARD & ANR. Vs. HAKIM SINGH reported in (1997) 8 S.C.C. 85 as under:-

"The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succour to the family which

has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

It has been thus observed by the Hon'ble Supreme Court that as an exception to the above-stated principle, the Government employment can be offered to one of the dependants of a deceased employee, if the concerned employee had died in harness and if the family was in a pitiable condition. It has been further observed in para 12 of the said judgement that;

"The object of the provisions should not be forgotten that it is to give succour to the family to tide over the sudden financial crisis befallen the defendants on account of the untimely demise of its sole earning member."

After making the above-referred observations, the Hon'ble Supreme Court ultimately came to the conclusion that;

" the very object of appointment of the dependent of a deceased employee who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family."

In the instant case, the father of the petitioner had expired in 1980 and the family has survived for a period of 22 years. In the circumstances, as observed by the Hon'ble Supreme Court, it would not be proper to entertain this petition at such a belated stage because if the petition is entertained at this belated stage, it would frustrate the object with which the policy referred to hereinabove has been framed by the Government authorities.

A similar view was taken by the Hon'ble Supreme Court in the case of STATE OF U.P. & Ors. Vs. PARAS NATH reported in (1998) 2 S.C.C. 412. The Hon'ble Supreme Court, while quoting the judgement delivered in the case of UNION OF INDIA Vs. BHAGWAN SINGH, (1995) 6 S.C.C 476, observed as under:

"The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of government

servant who dies in harness, when there is no other earning member in the family."

and ultimately came to the conclusion that compassionate appointment should not have been offered because of the delay which had taken place. In the case of PARAS NATH (Supra), the application was made after seventeen years from the date of death of the concerned government servant.

The Hon'ble Supreme Court has also observed in the case of L.I.C. of India Vs. ASHA AMBEKAR & ANOTHER, AIR 1994 S.C. 2148 that if there is a policy with regard to giving appointment on compassionate ground, the appointment must be given strictly as per the policy. It would not be proper to deviate from the policy and it would also not be proper on the part of the Courts to give any direction which would be contrary to the policy on which compassionate appointment is given by the employer.

Upon perusal of communication dated 8th November, 2001 (Annexure - K), it is very clear that as per the policy laid down by the concerned respondent, the policy was to be applied to cases where death of the concerned employee takes place after 4th July, 1988. If that is the policy laid down by the employer, as observed by the Hon'ble Supreme Court in the case of L.I.C of India (Supra), it would not be proper for this Court to give any direction contrary to the said policy to respondent no. 4 for giving appointment on compassionate ground, especially when the petition has been filed after more than twenty one years from the date of the death of the concerned employee. In view of the law laid down by the Hon'ble Supreme Court, it would not be possible for this Court to agree with the views expressed by the learned Single Judge in the judgement referred to by the learned advocate for the petitioner.

In the instant case, father of the petitioner expired in 1980. It is true that the petitioner was minor at the relevant time as he was born on 12th July, 1972. The petitioner attained majority somewhere in 1990 and he passed his S.S.C examination in 1992. Till that time, the family must have been in a pitiable condition as submitted by the learned Advocate, but the family survived, and now in the year 2002, if the family has survived for so many years, in my opinion as observed by the Hon'ble Supreme Court in the case of HARYANA STATE ELECTRICITY BOARD & ANOTHER Vs. HAKIM SINGHS (1997) 8 S.C.C. 85, there is no need to give any special help or

to do any special favour to the petitioner.

It is also pertinent to note that even as per the policy laid down in Government Resolution dated 4th July, 1988, as per Clause I, compassionate appointment cannot be given after more than five years from the date of the death. Looking to the said policy of the government, plea of the petitioner that he was a minor and therefore he has approached this Court late, cannot be entertained.

It is also pertinent to note from the correspondence, which has been exchanged between different authorities, that there was no vacancy where the petitioner could have been posted. If there was no vacancy, the Hon'ble Supreme Court has observed in the case of HIMACHAL ROAD TRANSPORT CORPORATION Vs. DINESH KUMAR reported in (1995) 4 S.C.C. 597 that no direction can be given for giving appointment on compassionate ground in such cases.

It has been submitted by learned Advocate that the policy of giving compassionate appointment should be implemented in its true spirit and, therefore, the petitioner should be given appointment on compassionate ground. The submission of the learned advocate is not proper. By making such a submission, the learned advocate indirectly wants to submit that the petitioner must be given appointment on compassionate ground even if he is not entitled to any benefit under the policy. If the petitioner is not entitled to any benefit under the said Government Resolution, the petitioner can not be given appointment on compassionate ground.

Even as per the policy referred to hereinabove, as per Clause II of the said Government Resolution, an appointment on compassionate ground can be given only if there is a vacancy in the cadre, and no new post can be created for the purpose of giving appointment on compassionate ground. As it appears that there was no vacancy at the relevant time, the petitioner was not given appointment on compassionate ground for the reason stated hereinabove. In my opinion the petitioner has no legal or fundamental right to be appointed to a Class III or Class IV post. The petition is therefore rejected.

Learned Advocate Mr Jasani has also submitted that looking to the facts of the case, the matter be referred to the Division Bench for the reason that this Court is not in an agreement with the view expressed by the learned Single Judge. Thus, it has been submitted by him that instead of deciding the matter, this Court

should refer the matter to the Division Bench.

So far as the submission regarding referring the matter to a larger Bench is concerned, in my opinion, it is not necessary for this Court to refer the matter to the Division Bench because this Court is not taking any contrary view to the view taken by the learned Single Judge. This Court is bound by the law laid down by the Hon'ble Supreme Court. In view of what has been stated hereinabove, I do not think it necessary to refer the matter to a Division Bench.

(A.R. DAVE,J.)

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